

State of Punjab

Vs

Bhura Singh and Others

Criminal Appeal No. 469 of 1976

(V. D. Tulzapurkar, M. P. Thakkar, V. Khalid JJ)

10.09.1984

JUDGMENT

THAKKAR, J. -

1. Reluctant as this Court ordinarily is to disturb an acquittal recorded by the High Court, it becomes its duty to do so, inter alia when incriminating evidence of a satisfactory character is ignored or overlooked, resulting in an unwarranted acquittal, in order to redeem the course of justice. The present is one of such cases.

2. One Gurbachan Singh was shot dead at about sunset time on April 23, 1973 at village Tajoke. Five respondents were charged with having caused his death by gun-fire. They were tried by the learned Additional Sessions Judge, Barnala, who found them guilty for various offences. For the offences under Sections 302 IPC and 302 read with 149, all of them were sentenced to imprisonment for life. For the offence under Section 148 IPC, a sentence of two years' RI was imposed against each of them. For the offence under Section 27 of the Arms Act, each of them was sentenced to suffer RI for one year. The High Court allowed the appeal preferred by the respondents and set aside the order of conviction and sentence. The State of Punjab has preferred this appeal by special leave and has contended that the learned Sessions Judge was right in finding the respondents guilty of the various offences and in convicting and sentencing them. And that the High Court had overlooked some important incriminating evidence and circumstances in reversing the order of conviction and sentence rendered by him. The learned Sessions Judge has accepted the evidence of PW 3 and PW 4, who, according to the prosecution, were eye-witnesses to the murderous assault being in the company of the deceased at the time of his assassination. Their evidence on its own strength appears to be sufficient to warrant a finding of guilt. The High Court seems to have resorted to unwarranted hair-splitting and has disregarded their testimony by making a somewhat casual and irrational approach. In any view of the matter, what places the matter beyond the clouds of reasonable doubt is circumstantial evidence of unimpeachable character which clinches the guilt of three of them viz. Bhura Singh, Chand Singh and Dasaundha Singh. If the totality of the evidence - direct and circumstantial - is taken into account, there is no escape from the conclusion that the Sessions Court was absolutely right in recording the finding of guilt as against them. And the High Court was altogether unjustified in interfering with the order of conviction and sentence which was unassailable on merits insofar as it concerned them. The following facts have been firmly established :

(1) The aforesaid three respondents were persons who held a licence under the Arms Act.

- (2) Each of them owned and possessed a gun under the authority of the said licence.
- (3) Admittedly the licensed gun belonging to each of these three respondents has been used in the commission of the offence of murder of deceased Gurbachan Singh.
- (4) The evidence of the forensic expert (PW 5) clearly establishes that the empty shells of cartridges which were found from the scene of offence soon after the Police arrived and made a search and seizure, were fired from the gun belonging to the respective respondent.
- (5) Each of the gun belonging to each of them had been recently used. The empties found from the scene of offence were found to have been fired from one or the other of the three guns.
- (6) Each of the accused had produced the recently fired gun along with the respective licence before the investigating officer in the presence of witnesses.
- (7) All the three guns belonging to the three respondents have been used in the commission of the crime.

3. The implication of these circumstances may now be spelled out. Since each of the guns used in the commission of the crime was a licensed gun belonging to each of the respective respondents, the possibility of the weapon having been planted was altogether excluded. The respondents have not explained under what circumstances the licensed guns belonging to them which in the normal course were expected to be in their possession, came to be fired recently. So also they have altogether failed to explain as to under what circumstances the cartridges came to be fired from each of the three guns so that the empties were found from the scene of offence. In other words, they have not explained how the firearms which were of their ownership and expected to be in their possession came to be used in the commission of the murder. The owner of a licensed gun would normally keep it in a secure place so that it is not used by unauthorised persons and so that no mishap occurs on account of an accidental firing of the gun. Even if the gun is accessible, the cartridges would not be accessible and the place where the cartridges are kept would ordinarily be known only to the licence-holder. If someone had surreptitiously taken away the gun, and somehow laid his hands on the cartridges, the same would not have quickly come back into the possession of the licence-holder, nor would he have been able to produce the recently used gun so soon. The probability of any such thing having happened even to one individual is insignificant. But, when this has happened in respect of each one of the three respondents, the probability of anyone other than the licence-holder having fired it can be virtually excluded with safety. On probabilities the conclusion is inescapable that the gun in question was fired by the respondent who was a licence-holder, particularly in the absence of any explanation coming from the licensed owners of these guns. It was a fact within their exclusive knowledge. And while they were under no compulsion to explain under what circumstances the licensed gun belonging to each of them came to be used in the murderous assault, the failure to explain the circumstance forges the link that completes the chain. When such an incriminating piece of circumstantial evidence is viewed in the light of the eloquent circumstance that the respondent concerned has no explanation other than silence to offer, the matter leaves no room for doubt, let alone a reasonable doubt, regarding the complicity and guilt of the three respondents. And when circumstantial evidence of such significance does not stand in lonely isolation, the matter assumes an extremely sinister complexion. The said evidence is supplemented by the evidence of the two eye-witnesses PWs 3 and 4 which connects the three respondents with

the crime. The oral testimony of these two witnesses finds ample corroboration from the circumstantial evidence which by itself as discussed earlier, is sufficient to bring home the guilt to the three respondents. The circumstantial evidence stares one in the eyes and the significance of this evidence could not have escaped unnoticed. The High Court somehow overlooked it and persuaded itself to reverse the trial court's order of conviction and sentence, on the ground that the "occurrence did not take place as deposed by Bahadur Singh and Dial Singh PWs". The High Court appears to have accepted their evidence as regards their presence at the time of the occurrence. However, the High Court felt that the occurrence may have taken place in a different manner inasmuch as the evidence of DW 1 disclosed that there were some pellet marks on the outer wall and inside of the house of respondent Bhura Singh. Now, in the first place, it is not known whether these marks were recent ones. The respondents themselves do not say how these marks came into existence and whether they had any connection with the occurrence. These marks naturally could not be explained by the witnesses. That is no good ground to doubt or disbelieve their evidence. And this circumstance does not impair the total effect of their evidence buttressed by the aforesaid circumstantial evidence. In the facts and circumstances of the case the finding of guilt recorded by the Sessions Court was virtually unassailable and the High Court could not have by any process of ratiocination, reversed it. There is, therefore, no option but to allow the appeal and reverse and set aside the order of acquittal rendered by the High Court. The order of conviction and sentence recorded by the Sessions Court must consequently be restored insofar as these three respondents are concerned.

4. With regard to the remaining two respondents, since the High Court has extended benefit of doubt to them and the strong piece of circumstantial evidence available in respect of the aforesaid three respondents, is not available in the case of these two respondents, we do not think that we can interfere with the order of acquittal rendered by the High Court. We need not therefore dwell at length on the evidence connecting them with the crime. The appeal insofar as these two respondents are concerned, must accordingly be dismissed. Their bail bonds shall be cancelled.

5. Insofar as the three respondents who are being convicted and sentenced viz. Bhura Singh, Chand Singh and Dasaundha Singh (respondents 1, 2 and 5 respectively) are concerned, bailable warrants for their arrest were issued when special leave was granted and the present appeal was admitted by this Court. The said respondents are accordingly on bail at present. They shall therefore surrender to bail forthwith. Warrants for their arrest shall issue forthwith and they shall be taken into custody to serve out the sentence imposed on them.

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